

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No. 1547/2024 in LPA No.72/2024

UNION TERRITORY OF J&K AND ORS. ...Petitioner/Appellant(s)

Through: Mr. Faheem Shah, GA.

Vs.

SALEEMA BEGUM AND ORS. ...Respondent(s)

Through: Mr. Irshad Ahmad, Advocate.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER (ORAL)

01.07.2025

CM No.1547/2024

For the reasons stated in the application the same is allowed and delay of 497 days in filing the appeal is condoned.

Application disposed of.

LPA No.72/2024

1. This appeal filed by the Union Territory of Jammu and Kashmir and Others, arises out from the order and judgement dated 09.09.2022 passed by the learned Single Judge of this Court in OWP No.1042/2024 titled as "*Saleema Begum and Ors. Vs. State of JK and Ors.*" whereby the learned writ Court has allowed the petition of the respondent and awarded a sum of Rs.24,30,000/- along with interest @ 6% per annum from the date of filing of the petition.
2. Briefly stated facts leading to the filing of this appeal are that, on 24.07.2013 at about 7:40 pm, 11000 KV live electric supply line

accidently fell on the head of one Nazir Ahmad resulting in his on spot death. The incident was attributed to the negligence of the appellants and accordingly on the intervention of the people of the locality an FIR was registered with Police Station Bijhama, Uri. Since the death of the deceased had happened due to the falling of live electric supply wire, as such, the next of the kins of the deceased approached this Court by way of OWP No.1042/2024 seeking compensation from the appellants. It was pleaded by the respondents (writ petitioners) that the deceased was sole bread earner of the family, earning Rs.500/- per day while working as a Carpenter. Without saying much in the petition, the respondent herein claimed compensation of Rs.30.00 lacs from the appellants herein on account of loss caused to them because of the death of the deceased by negligence of the appellants.

3. Writ petition was contested by the appellants and in the objections filed, a plea was taken that the incident which resulted into death of deceased had happened due to the deceased himself fiddling with the live electric supply wire and that no negligence was attributable to the appellants.
4. The writ petition was considered by the writ Court and vide judgement impugned the same was allowed and the compensation as indicated above along with interest was awarded.
5. The impugned judgement of the writ Court is assailed by the appellants primarily on the ground that the writ petition involved complicated and disputed questions of facts which could not have been adjudicated upon or determined by the writ Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution.

6. The impugned judgement is also challenged on the quantum of compensation by contending that the writ Court has not followed the guidelines for computing the compensation as laid down in the case of “National Insurance Company Ltd. Vs. Pranay Sethi” reported in AIR 2017 SC 5157. It was also pointed out by Mr. Faheem Shah, learned counsel for the appellants that the respondent had not placed on record any proof of income and the age of the deceased at the time of accident. Our attention was drawn to the post-mortem report in which the age of the deceased has been indicated as 45 years.
7. Learned counsel appearing for the respondents would submit that the respondent had categorically pleaded in the petition that the deceased was a Carpenter earning Rs.500 per day which fact was not disputed by the appellants in their reply affidavit. Learned counsel, however, could not show from the records any document to substantiate the age of the deceased at the time of accident. Learned counsel would submit that the judgement passed by the writ Court is in consonance with law laid down by the Hon’ble Supreme Court in the case of Pranay Sethi, therefore deserves to be maintained.
8. Having heard the learned counsel for the parties and perused the record.
9. We are of the considered opinion that the learned writ Court has rightly concluded that the accident which consumed the life of the deceased was attributable to the negligence of the appellants. The maintenance of electric supply live lines is the duty of the appellants and more particularly when the appellants are dealing with such hazardous activity. The negligence in the accident that happens in relation to such

activity has to be presumed. We do not want to delve deep into this aspect for the reason that the learned appearing counsel for the appellants could not show any contrary material to indicate that the deceased himself was a responsible for the accident which ultimately took away his life. Apart from concurring with reasoning given by the writ Court with regard to the negligence of the appellants we also find that in the case on hand the principle of doctrine of *res ipsa loquitur* was attracted. The manner in which the accident is stated to have taken place, coupled with the report of investigation conducted by the police clearly indicates that there was negligence on the part of the appellants in maintaining the electric supply lines.

10. Insofar as the quantum of compensation is concerned, we are of the considered opinion that the writ Court has erred in computing a just and fair compensation payable to the respondents. Admittedly as is reflected in the post mortem report the age of the deceased was 45 years and in absence of any other proof on record the same should have been taken as a basis for working out the compensation to be paid to the respondents. As laid down in para 42 of **Sarla Verma's** case which is affirmed by **Pranay Sethi**, the multiplier applicable was 14 not 15 as applied by the learned writ Court. Similarly, the learned writ Court has failed to appreciate that in the absence of any proof brought on record by the petitioners with regard to the income of the deceased, the income of deceased ought to have been determined on the basis of minimum wages which were prescribed for a labourer at the relevant point of time. The minimum wages as is contended by the learned counsel for the appellants in the year 2013 was less than Rs.200, but

having regard to the facts and circumstances, we have taken minimum wages as Rs.250/- per day. Similarly the future prospectus to be added to the income of the deceased ought to have been 25% having regard to the age of the deceased which at the relevant point was 45 years. The cost of litigation in such matter is also not permissible for the persons compensated by payment of interest from the date of filing of the petition. Going by the aforesaid calculations, the total loss of dependency comes to Rs.10,50,000/-. In addition thereto the respondents herein were also entitled to following amounts:

i. Loss of estate	15,000/-
ii. Loss of consortium	40,000/-
iii. Funeral expenses	15,000/-

11. The total amount that shall be payable to the respondents would be 11,20,000/-. This amount shall be payable with an interest @ 6% per annum from the date of filing of the petition, till its realization as is provided by the learned writ Court. The compensation shall be paid to the respondents in equal share.
12. Registry shall release the award amount in favour of the respondents subject to verification and completion of other formalities. The excess amount if any, with the Registry shall be returned to the appellants.
13. Disposed of.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
01.07.2025
Ishaq